

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO**

In re:) Case No. 17-17361
) Chapter 11
RICHARD M. OSBORNE)
) Judge Arthur I. Harris
Debtor)

**OBJECTION OF CITIZENS BANK, N.A. TO
DEBTOR'S MOTION TO SELL PARCEL OF VACANT REAL PROPERTY LOCATED
AT PLAZA BOULEVARD, MENTOR, OHIO FREE OF ANY INTEREST OF ANY
ENTITY OTHER THAN THE ESTATE**

Citizens Bank, N.A. fka RBS Citizens, N.A. dba Charter One (“Citizens”), by and through counsel, objects to Debtor’s Motion to Sell Parcel of Vacant Real Property Located at Plaza Boulevard, Mentor, Ohio Free of any Interest of any Entity Other Than the Estate [Doc. 429] (the “Motion”). While Citizens is presently reviewing this proposed sale, it objects to the Motion for the reasons stated herein. In support of this Objection, Citizens states as follows:

1. In the Motion, Debtor seeks to sell the real property identified as a vacant lot located at Plaza Boulevard, Mentor, Ohio (PPN 16B031B000310) (the “Property”).
2. As evidenced by the Commitment for Title Insurance attached as Exhibit B to the Motion, Citizens has the first and best lien on the Property based on a mortgage, which was recorded with the Lake County Recorder on April 3, 2008 as Instrument No. 2008R009281.
3. Citizens also has judgment liens which attach to the Property and which were filed (i) on August 21, 2009 with the Clerk of the Lake County Common Pleas Court as judgment lien no. 09-JL-004014, and which judgment lien was renewed on August 18, 2014 as judgment lien no. 14-JL-003247; and (ii) on August 21, 2009 with the Clerk of the Lake County Common Pleas

Court as judgment lien no. 09-JL-004015, and which judgment lien was renewed on August 18, 2014 as judgment lien no. 14-JL-003248.

4. Additionally, Citizens holds a mortgage on the Property pursuant to a mortgage, which was recorded with the Lake County Recorder on June 4, 2014 as Instrument No. 2014R013442.

5. On April 18, 2018, Citizens filed a proof of claim (the “Claim”) in the amount of \$8,076,373.53 plus other amounts as stated in the Claim. In the Statement of Claim, which is attached as part of the Claim, the history of the secured obligations owed to Citizens is outlined in detail. The Claim is designated by the Court as Claim No. 28. Since the filing of the proof of claim, Citizens has received \$150,000 from a sale of real property (11520 Monarch Court) and \$9,064.81 from the sale of the Hamilton Road, Mentor, OH “devil strips”, both of which sales were from the Wilson Land Properties bankruptcy case (18-10514), and \$50,000 from the sale of real property (7325 Reynolds Rd., Mentor, OH) in this bankruptcy case.

6. Citizens objects to the Motion and the proposed Order for the following reasons:

a. The Motion fails to indicate what efforts were made to market this Property, for how long, and if any other bids had been received.

b. The Full Search unequivocally shows that Citizens, formerly known as RBS Citizens, N.A., has the first and best lien on the Property.

c. Paragraph 10 of the Motion incorrectly states that “all such holders of any interest consent to the sale free and clear of their interest.” Citizens has not consented to this sale.

d. It is undisputed that Citizens has the first and best lien on the Property (after real estate taxes) and that there remains a balance owed well in excess of the potential net proceeds (after payment of real estate taxes and closing costs, the “Net Proceeds”) that may be derived from

the sale of the Property. Based upon Citizens' first and best lien on the Property, all net proceeds from the sale should be properly be paid to Citizens at the closing of the sale.

e. No settlement statement has been attached to the Motion to indicate what amounts will be deducted from the purchase price, and how much the Net Proceeds will be.

WHEREFORE, Citizens respectfully requests that its Objection be sustained and that the Debtor be required to (i) address Citizens' objections to the Motion; (ii) pay all net proceeds of the sale to Citizens; and (iii) for such other and further relief as may be allowable pursuant to applicable law or in equity.

Respectfully submitted,

/s/ Michael S. Tucker

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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2019, a copy of the foregoing Objection was filed electronically. Notice of this filing will be sent to all parties registered to receive electronic notices through the Court's CM/ECF system as listed below. Parties may access this filing through the Court's PACER system.

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